

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DENNIS FARRELL SILER, II,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:12CV108
	)	1:09CR219-1
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

ORDER

On June 29, 2016, the United States Magistrate Judge's Recommendation was filed and notice was served on Petitioner pursuant to 28 U.S.C. § 636.

Petitioner filed objections [Doc. #61] to the Recommendation within the time limit prescribed by Section 636. The Court has reviewed Petitioner's objections de novo and finds they do not change the substance of the United States Magistrate Judge's Recommendation [Doc. #59], which is affirmed and adopted.

The Court notes that Petitioner subsequently filed a Motion to Supplement [Doc. #64] raising a challenge to a 21 U.S.C. § 851 sentencing enhancement. However, no Information of Prior Conviction was filed in this case, and Petitioner was not subject to a statutory enhancement under § 851. Therefore, his Motion to Supplement is without merit and will be denied.

In addition, Petitioner subsequently filed, through counsel, a Suggestion of Subsequently Decided Authority [Doc. #65], citing to United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018). However, Wheeler relates to the availability of 28

U.S.C. § 2241 to challenge a § 851 enhancement affecting a statutory mandatory minimum sentence. Id. at 431-33 & n.9. No such statutory enhancement was applied in this case, and Petitioner was instead sentenced pursuant to the advisory Sentencing Guidelines. Thus, Wheeler would not affect the determination in this case.

IT IS THEREFORE ORDERED that the STAY previously entered in this action is LIFTED, Respondent's Motion to Dismiss [Doc. #38] is GRANTED, Petitioner's Motion [Doc. #23] and Amended Motion [Doc. #48] to vacate, set aside or correct sentence are DISMISSED, Petitioner's Motion to Supplement [Doc. #64] is DENIED, and this action is DISMISSED, and that, finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is DENIED.

This the 25<sup>th</sup> day of July, 2018.

/s/ N. Carlton Tilley, Jr.  
Senior United States District Judge